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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: **JUN 02 2014**

Office: COLUMBUS, OH

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Columbus, Ohio (the director), and the matter came before the Administrative Appeals Office (AAO) on appeal. On November 6, 2013, the AAO sustained the appeal. On March 7, 2014, the AAO reopened the proceedings, withdrew its prior decision, and provided the applicant with an opportunity to supplement the record. The applicant failed to respond within the time specified. The appeal will be dismissed.

Pertinent Facts and Procedural History

The applicant claims to have been born on October 7, 1997 in Kenya. The applicant's claimed parents are [REDACTED] and [REDACTED]. The applicant's alleged father became a U.S. citizen upon his naturalization on June 1, 2012, when the applicant was 14 years old. The applicant's alleged mother is not a U.S. citizen. The applicant, a Somali refugee, was admitted to the United States as a lawful permanent resident as of October 19, 2006, when he was nine years old. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000).

The director denied the application finding that the applicant had failed to provide a birth certificate to establish that he was the child of a U.S. citizen. On appeal, the applicant submitted a Birth Notification, issued by the Kenya Red Cross Society at the [REDACTED] Refugee Camp where the applicant was born. The AAO sustained the appeal.

The AAO reopened the proceedings, withdrew its prior decision, and provided the applicant with an opportunity to submit a birth certificate and evidence that he was in the physical and legal custody of his alleged father. The applicant was afforded 33 days in which to provide the requested evidence. The applicant has failed to respond.

Applicable Law

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." See *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). The applicant was under 18 years of age on the effective date of the CCA, February 27, 2001. Thus, section 320 of the Act, as amended by the CCA, is applicable to his case.

Section 320 of the Act provides, in pertinent part, that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
 - (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.

- (2) The child is under the age of eighteen years.
- (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

The regulations, 8 C.F.R. § 320.3(b)(1)(i), require that the applicant submit a birth certificate when applying for a certificate of citizenship.

The regulation at 8 C.F.R. § 320.1 defines "legal custody" as "the responsibility for and authority over a child." Legal custody is presumed in the case of a "biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated)." See 8 C.F.R. § 320.1(1)(i).

Analysis

The applicant has not submitted a birth certificate. According to the U.S. Department of State, birth certificates are available in Kenya and may be obtained from the Department of Civil Registration.¹ As the record does not contain a copy of the applicant's birth certificate, the applicant cannot demonstrate his eligibility to derive U.S. citizenship through his alleged parent under section 320 of the Act.

The record also does not contain evidence that the applicant was in his alleged father's legal and physical custody when the alleged father naturalized in 2012. The applicant has submitted no evidence to demonstrate this eligibility criterion.

Conclusion

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. See Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed. The application remains denied.

¹ See <http://travel.state.gov/content/visas/english/fees/reciprocity-by-country/KE.html>